



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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February 24, 1997
AO-97-05

By fax and first-class mail

Ms. Lucy Banks
Holden School Building Committee
70 Laurelwood Road
Holden, MA 01520

Re: Expenditure of public funds to distribute information to
voters

Dear Ms. Banks:

This letter is in response to your recent request for an advisory opinion regarding the distribution of a report by the Holden School Building Committee using public funds or resources.

Question

May the report of the Holden School Building Committee be distributed to voters using the regional school district's bulk mail permit or by the Holden Light Department with the Department's monthly bills?

Answer

No.

Facts

You have provided a draft report for our review. The report contains the following sections: "What is the Holden School Building Committee?" "How is the Building Committee planning the project?" "Why does Holden need new elementary schools?" "Why reduce the number of schools?" "How were the sites chosen for the two new elementary schools?" "What is the plan for Dawson School?" "What happens next?" "How can citizens get involved?" and lists members of the School Building Committee. In the section entitled "What happens next?" the report will advise recipients about a special town meeting scheduled for March 22.

On February 20, the selectmen voted to place a Proposition 2 1/2 override question on the ballot to approve borrowing to fund the project. A special election will take place on March 24.

The draft report, which was prepared before the selectmen voted to put the question on the ballot, does not reference the ballot question and does not ask recipients to vote one way or the other on the question.

A ballot question committee supporting the question has filed a statement of organization with the town clerk and will pay for the duplication of the report. You have stated, however, that the committee does not have the funds to mail the report to residents, and you would like to know if public funds can be used for that purpose.

Discussion

In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election. The court stated that the campaign finance law demonstrates an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose." 376 Mass. at 193-195.

Accordingly, this office has concluded that "governmental entities" may not expend public resources or contribute anything of value in support of or opposition to a ballot question. Public resources include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and word processors, as well the use of a state, county or municipal seal. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided. See Memorandum dated March 1, 1996 from Robert V. Antonucci.¹

In municipal elections, particularly in towns, the provisions of the campaign finance law are generally triggered once a question is "on the ballot." See IB-90-02. The campaign finance law does not require disclosure of expenditures made solely to affect the deliberations on a warrant article at town meeting. Once a determination is made by the appropriate municipal authority to place a question on the ballot (in this instance, a special election ballot), however, any contributions or expenditures made thereafter for the purpose of distributing information such as the report (even if admittedly objective and also distributed to affect the deliberations of town meeting) should be made to or by a duly organized ballot question committee or by an existing association, corporation or other organization in accordance with M.G.L. c. 55.

¹ In addition, public resources may not be used to distribute even admittedly objective information regarding a ballot question unless expressly authorized by state law. See the Joint Memorandum issued by the Secretary of State's Election Division and this office on March 1996. The Legislature has enacted special laws allowing only three municipalities (Cambridge, Newton and Sudbury) to distribute ballot question information to voters. See ch. 630 of the Acts of 1989 (Cambridge), ch. 274 of the Acts of 1987 (Newton), and ch. 180 of the Acts of 1996 (Sudbury).

As the question of approving funding for the school project is now "on the ballot," public funds may not be used to distribute the Building Committee's report.² We recognize that you have stated that the report is being distributed to affect the March 22 town meeting, does not reference the ballot question and does not advocate a particular vote on the question. Given the timing of the report's distribution, however, the report would be considered as influencing not only a town meeting warrant article, but also the ballot question which will be placed before the voters on March 24. Therefore, public resources (including the regional school district's bulk mail permit) may not be used to distribute the report and the report may not be mailed to residents by the Holden Light Department. See AO-95-42, in which the office concluded that a municipal power company may not use its resources to influence a ballot question, even if the company does not receive tax dollars to fund its operations.

The campaign finance law defines the mechanism for persons interested in raising funds to provide information about ballot questions or otherwise support or oppose such questions. Specifically, persons may organize "ballot question committees" for that purpose. See M.G.L. c. 55, s. 1. In addition, organizations such as PTAs may make expenditures to distribute voter information, if they disclose the expenditure on a form available from the town clerk.

This opinion is provided on the basis of representations in your letter and in conversations with OCPF staff, and on information provided by the town clerk, and is solely within the context of the campaign finance law.

I encourage you to contact us in the future if you have further questions.

Sincerely,



Michael G. Sullivan
Director

cc: Kathleen M. Peterson, Town Clerk

MJS/cp

² Financial activity prior to the decision to place a question on the ballot may also be subject to the campaign finance law. For example, a flyer distributed to voters which by its terms advocates a "yes" vote on an anticipated ballot question, even if the question has not yet been placed on the ballot, would not be consistent with the law.